

October 24, 2005

Response 02, ISS1.002
Application No. 10/811,550**REMARKS**

This is a response to the Office Action of June 24, 2005. This response is submitted on October 24, 2005 accompanied by a petition for a one-month extension of time and the requisite small entity fee. A Notice of Appeal is also submitted.

Applicant currently amends claim 1 to further clarify the inventive subject matter. Claims 6 – 17 are canceled without prejudice. Claims 18 and 19 have been added, each referring to the amended claim 1. Claim 18 is identical to claim 8 of the application as filed. Claim 19 is identical to claim 10 of the application as filed.

It is submitted that the claims presented herein overcome the rejections of the present Office Action. The currently amended claim 1 is based on the application as filed. On information and belief, Applicant certifies that no new matter has been added.

Claim 1 as amended recites:

A flue liner insert comprising four individual substantially identical components of sheet material, each component having a cross section that is generally L-shaped with a beveled corner, the components together forming a vertical flue passage of substantially constant cross sectional area throughout the length of said vertical flue passage, each component comprising adjustable fastening means such that each component is independently adjustable in position with respect to the other components.

The Examiner has rejected claim 1 previously presented under 35 U.S.C. 103(a) as obvious from Bayley (US Patent 850,126) in view of Hisey (US Patent 4,534,280). Applicant points out that the Bayley device has a varying cross sectional area, and is not suitable for joining two ceramic flue tiles in the way that can be easily achieved with Applicant's invention, as it provides no support for the upper flue tile. The combination of the Hisey and Bayley devices does not provide an apparatus that achieves the result of the present invention.

The Examiner has rejected claims 1 – 5 as previously presented under 35 U.S.C. 103(a) as obvious from Perry (US Patent 5,025,712) in view of the aforementioned Hisey patent (US Patent 4,534,280). Claim 2 has been canceled. Applicant points out that the devices disclosed by Perry and Hisey do not teach a device fabricated from four substantially identical parts as disclosed in the application as filed of the Applicant.

As disclosed by the application as filed, the Applicant's invention distributes the load of the chimney extension over a large portion of the supporting flue tile (see FIG. 3 of application as filed and accompanying discussion), rather than only the top edge or lip of the supporting flue tile, as is the case with the Perry device or Hisey device.

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Furthermore, neither the Perry device nor the Hisey device, alone or in combination, can be used to join two flue tiles to extend a chimney.

Applicant submits that the currently amended claim 1 overcomes the present rejection and defines novel and nonobvious subject matter.

Claim 1 recites that the components of the claimed flue liner form a vertical flue passage of substantially constant cross sectional area throughout the length of said vertical flue passage. This is distinguishable from the device of the Bayley patent, which has a cross sectional area that varies along its length and thus is more likely to restrict the free flow of chimney gases than Applicant's.

Claim 1 also recites a flue liner insert comprising four individual substantially identical components. The Perry patent discloses a mounting band comprised of non-identical components, namely arched sections 22, and slide bars 24. Identical components are an advantage of the present invention, as they facilitate easy and economical manufacturing, distribution and storage.

The Hisey patent discloses a band means 4, substantially continuous in design, welded at its ends (Col. 4, lines 2 – 5). This suggests a device which does not afford the adjustability which can be achieved with the present invention.

Furthermore no cited reference, or combination of the cited prior art references, would be suitable for carrying out the method of claims 4, 5, 18 or 19.

CONCLUSION

The Examiner is respectfully requested to enter the present amendment because it will make the case allowable. In the alternative, the present amendment should be entered so as to narrow any remaining issues on appeal. The Examiner is respectfully requested to reconsider the rejections in view of the claim amendments herein and the remarks above. A notice of allowability is earnestly solicited.

If the Examiner does not find that the present amendment has placed the case in condition for allowance, Applicant's attorney would request the opportunity to schedule an interview.

Respectfully submitted,

/gerryjayelman/

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